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E.O. 12958: DECL: 02/06/2018  
TAGS: [PTER](#) [PREF](#) [PREL](#) [CVIS](#) [EUN](#)  
SUBJECT: EUROPEAN UNION ASYLUM APPROVALS AND PROCEDURES -  
ADEQUATE FOR TERRORISM CONCERNS?

REF: A. 2007 BRUSSELS 3080  
[1](#)B. 2007 BRUSSELS 3527  
[1](#)C. 2007 BRUSSELS 3526

Classified By: USEU POLMINCOUNS Larry Wohlers for reasons  
1.4(b) and 1.4(d)

[1](#)1. (C) Summary: In advance of the February 9 visit to Brussels of S/CT Deputy Frank Urbancic to call on the European Union's Coordinator for Counter-Terrorism Issues, Giles de Kerchove, USEU has begun an examination of the current nexus between the European Union's 27 member states' policies and procedures for the granting of asylum and subsequent oversight of asylees, and the degree to which appropriate terrorist screening and concerns are applied to these programs. Several recent cases have raised concerns, including the travel within the Schengen area of suspected PKK terrorists who have been granted asylum by an E.U. member state. An initial examination of the policies and procedures reveals a possible lack of coordination of both background checking and various national policies. The EU, however, recognizing the need for a more unified and efficient asylum policy, is moving toward adoption of a "common asylum policy." This message details below the initial areas of concern and the EU's existing policies. End Summary.

[1](#)2. (C) The Current Context

With the planned February 9 visit of S/CT Deputy Frank Urbancic to Brussels and the EU, USEU has begun an examination of the current nexus between the European Union's member states' policies around asylum and the degree to which terrorism concerns are taken into account. The three reflets noted were instructions to post to raise with the EU concerns regarding the travel within the Schengen area and activities of suspected PKK terrorists. In the third case USEU officials raised the issue with Mr. de Kerchove directly. USEU officials also briefly raised our initial concerns on these issues with the EU Commission Director General of Justice, Freedom and Security on January 30. Recent press reports also noted that the EU's Strategic Committee on Immigration, Frontiers and Asylum (SCIFA), meeting in Ljubljana January 17 and 18, discussed ways to strike the proper balance between counter-terrorism measures and the protection of human rights, especially the right to protection and asylum. Reports said SCIFA "noted recent improvement in cooperation between different institutions,

agencies and organizations active in this area" and heard from a UNHCR representative who said that countries "had an obligation to provide refugees with protection but stressed that refugees were not in a privileged position before the law."

### 13. (SBU) The Granting of Asylum - Standards between 27 EU States

European Union Council Directive 2004/83/EC of 29 April 2004 sets out the minimum EU standards for third country nationals or stateless persons to qualify as refugees. According to the Director of the Asylum, Visas, and Immigration Section of the EU Council, to receive asylum under EU law is to be accepted as a refugee; thus it appears that the EU uses the terms asylee and refugee interchangeably. The Directive requires member states (excluding Denmark) to assess the applications for international protection on an individual basis, and sets out basic factors to be used in this process.

The Directive specifies the type of persecution necessary for an individual to qualify as a refugee. The requirements are closely tied to the Geneva Convention.

The Directive also sets out the reasons for cessation or exclusion from refugee status. The reasons for excluding a third country national from refugee status are the commission

of a crime against peace or humanity, a serious non-political crime outside the country of refuge prior to admission as a refugee, or acts contrary to the purposes and principles of the UN as set out in the Preamble and Articles 1 and 2 of the UN Charter.

Revocation of refugee status is allowed when the person ceases to be a refugee in accordance with Article 11 of the

Directive, or if the person should have been initially excluded from refugee status under Article 12, or if the person presented false documents, or omitted facts, or misrepresented facts to obtain refugee status. The member state may also revoke refugee status when there are reasonable grounds to regard the refugee as a danger to the security of the member state, or has been convicted in a final judgment of a particularly serious crime. Although, to revoke refugee status on the basis of security concerns, or criminal conviction, the refugee is entitled to the rights set out in Articles 3, 4, 16, 22, 31, 32, and 33 of the Geneva Convention.

### 14. (SBU) Asylee Rights to Travel with the EU/Schengen

The current rules allow for limited travel of asylees in the EU. They are not granted full freedom of travel like an EU citizen. They can travel outside the asylum granting nation for 90 days, similar to a tourist in the Schengen Zone. They are not allowed to establish a residence in another EU state.

There is a current proposal that would grant freedom of movement to an asylee after s/he has resided in the granting state for 5 years.

### 15. (SBU) Reciprocity for Asylum Granted in another Member State

Currently there are no rules governing reciprocity. The asylee cannot move to another EU member state once asylum is granted. There is current discussion about requiring other member states to recognize asylum claims granted in other member states, and limiting the ability of member states from deporting the asylees to a nation other than the granting nation.

The current rules only allow for one member state to make the determination of the refugee's status. These rules are set out in Council Regulation 343/2003 of February 18, 2003. Any member state where a family member of the asylum seeker resides is the first choice for examining the application. The next in line is any member state where the asylum seeker

is in possession of a valid residence document, or visa. Otherwise, the member state where the asylum seeker entered the EU should be responsible, unless it can be shown that the seeker has spent five months residing in another member state. A member state can, for humanitarian reasons, examine the application for asylum even if it is not the state responsible provided that the responsible state and the asylum applicant agree to the change of venue.

According to an Immigration Policy Officer at DG JLS, there is currently no EU directive covering the apprehension of an asylee in another member state. In this situation the Geneva Convention would be the only international law governing the actions of the member state. However, the European Convention on Human Rights would prevent the member state from deporting the refugee to a nation where s/he would face torture, or inhumane treatment.

#### 16. (SBU) Rules for Revocation of Refugee Status

The rules for revocation of refugee status are spelled out in Council Directive 2004/83/EC of April 29, 2004 in Article 14.

These rules do not mention asylees, but the Director of the EU Council's Section on Asylum, Visas, and Immigration explained that asylum is simply the recognition of refugee status; thus it appears that the EU uses the terms asylee and refugee interchangeably. These rules mirror the rules set out for excluding refugee status, and include a misrepresentation or omission of facts during the original application process, reasonable grounds for determining that the refugee is a danger to the security of the member state, or that the refugee has been convicted of a particularly serious crime. Article 38 of Council Directive 2005/85/EC of December 1, 2005 sets out the procedures that must be followed before a refugee can have his/her status revoked.

#### 17. (SBU) Checks on Asylum Claims

The EU maintains the EURODAC database with information on persons requesting asylum in one or more Member States. Authorities may use such information to verify whether a

person has requested asylum. Nonetheless, because of strict data privacy rules, authorities may not use such information for law enforcement purposes or to check the validity of asylum claims (i.e., whether an applicant has provided consistent or conflicting information to different member states.) Some Interior Ministers have proposed expanding the original use of the EURODAC data base to meet law enforcement and counter-terrorism purposes, but they have encountered opposition among colleagues who assert that such uses would improperly expand the original scope of purpose for creating the database rules.

#### 18. (SBU) Future Plans for an EU Common Asylum Policy

A Green paper was presented on June 6, 2007 to set up a common EU asylum system. The Commission is hoping to harmonize eligibility criteria, clarify the grounds for protection, converge the rights and benefits offered the asylees, and establish a system for the mutual recognition of national decisions relating to asylum. We were also informed that part of this plan would allow refugees who have been granted asylum status to have more freedom of movement within the EU after residing for five years in the state that granted the asylum claim.

19. (C) Comment. Except for general guidelines given to member states on the need for criminal and security checks, it appears that each member state determines the scope of their checks. Issues around limits on travel and possible loss of asylum for security concerns are also vague. Mr. Urbancic's visit provides an excellent opportunity to inquire further with de Kerchove regarding harmonization efforts, especially given the opening that the development of the Common Asylum Policy may provide. End Comment.

Wohlers

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